

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

**HEARING DATE: May 4 , 2011
HEARING TIME: 10:00 a.m.**

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In re: : **Case No. 04 B 14738 (SCC)**
:
Russell Restaurant Group, LLC, : **(Chapter 7)**
:
: **Debtor.** :
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**RESPONSE OF THE UNITED STATES TRUSTEE REGARDING
APPLICATIONS FOR FINAL COMPENSATION**

**TO: THE HONORABLE SHELLEY C. CHAPMAN,
UNITED STATES BANKRUPTCY JUDGE:**

Tracy Hope Davis, the United States Trustee for Region 2 (the "United States Trustee"), respectfully submits this response regarding the following applications seeking awards of final commissions, compensation and reimbursement of expenses in this Chapter 7 case.

| <u>APPLICANTS</u> | <u>FEE</u> | <u>EXPENSES</u> | <u>HOURS</u> | <u>PERIOD</u> |
|---|--------------------------|-------------------|---------------|----------------------|
| Roy Babitt, Chapter 7 Trustee | \$7,070.83 ¹ | \$0.00 | N/A | 07/16/04 to Present |
| Davidoff Malito & Hutter, Prior Counsel to the Chapter 7 Trustee | \$7,934.00 | \$261.95 | 35.30 | 07/20/04 to 09/19/05 |
| Arent Fox PLLC, Current Counsel to the Chapter 7 Trustee | \$87,591.00 ² | \$1,115.22 | 268.90 | 01/18/06 to Present |
| Gittelman and Company, Accountants for the Chapter 7 Trustee | \$41,423.00 | \$755.00 | N/A | 08/25/04 to Present |
| Totals: | \$144,018.83 | \$2,132.17 | 304.20 | |

¹ The Trustee has voluntarily reduced his commissions to \$2,900.87.

² After discussions with this Office, the applicant has agreed to reduce their fee request by \$10,000.00. This will allow for a 2.7% distribution to the priority creditors.

In addition, the receipts of the estate are:

| <u>As of Date</u> | <u>Gross Receipts</u> | <u>Disbursements</u> | <u>Balance on Hand</u> |
|-------------------|-----------------------|--------------------------|------------------------|
| January 5, 2011 | \$76,418.13 | \$15,200.95 ³ | \$61,217.18 |

Background

1. On July 14, 2004, Russell Restaurant Group, LLC (the “Debtor”) filed a voluntary petition under Chapter 7 of the Bankruptcy Code.
2. On July 16, 2004, Roy Babitt (the “Trustee”) was appointed as interim trustee in this case and thereafter qualified as permanent Chapter 7 Trustee.
3. By order of the Bankruptcy Court dated August 20, 2004, Davidoff Malito & Hutcher, was retained as counsel to the Trustee.
4. By order of the Bankruptcy Court dated August 25, 2004, Gittelman & Company, was retained as accountants for the Trustee.
5. By order of the Bankruptcy Court dated March 2, 2006, Arent Fox PLLC (“Arent Fox”) was retained as counsel to the Trustee *nunc pro tunc*, effective as of January 16, 2006.
6. The Trustee and his professionals recovered the sum of \$73,500 from two preference actions against Dairyland USA Corporation and Chris Russell.

³ The sum of \$15,200.95 was disbursed as follows: (1) on August 24, 2010, the Bankruptcy Court signed a stipulation and order paying \$15,000.00 to the Landlord of the Debtor; and (2) \$200.95 was paid to the International Sureties, Ltd., for the Trustee’s bond premium.

7. The Trustee reports that he has examined all claims that were filed with the Bankruptcy Court. There are no secured. The priority claims total \$36,674.86. The timely allowed unsecured claims total \$132,105.86. Commissions, compensation and expenses requested by the Chapter 7 applicants herein aggregate \$146,151.00⁴. Based on the reduction in legal fees of Arent Fox in the amount of \$10,000.00, the Trustee proposes that the priority creditors will receive a distribution of 2.7%. The estate is administratively insolvent and there will be no funds available for a distribution to the unsecured creditors.

Chapter 7 Applicants:

Roy Babitt, Chapter 7 Trustee

8. The Trustee seeks commissions pursuant to 11 U.S.C. § 330 in the amount of \$2,900.87, which is less than the \$7,070.83 maximum commissions allowed by 11 U.S.C. § 326, based upon gross receipts in the amount of \$76,418.13, which receipts will be disbursed to parties-in-interest excluding the Debtor. The United States Trustee has no objection to an award of commissions sought by this applicant in the amount of \$2,900.87.

Arent Fox PLLC, Current Counsel for the Chapter 7 Trustee

9. Based upon the \$10,000.00 reduction in this Applicant's request for compensation, the United States Trustee does not object to the payment of compensation to the above applicant in the amount of \$25,934.99. The United States Trustee has no objection to the reimbursement of expenses to the above applicant in the amount of \$1,115.22.

⁴ The estate is administratively insolvent and the Chapter 7 applicants will receive 41% of their filed fee applications.

Davidoff Malito & Hutcher, Prior Counsel for the Chapter 7 Trustee

10. The United States Trustee has no objection to the award of compensation and reimbursement of expenses in the amount requested by the applicant.

Gittelman & Company, Accountants for the Chapter 7 Trustee

11. The United States Trustee has no objection to the award of compensation and reimbursement of expenses in the amount requested by the applicant.

Dated: New York, New York
March 16, 2011

Respectfully submitted,

TRACY HOPE DAVIS
UNITED STATES TRUSTEE

By: /s/ Paul K. Schwartzberg
Paul K. Schwartzberg
Trial Attorney
33 Whitehall Street - 21st Floor
New York, New York 10004
Tel. No. (212) 510-0500